BEFORE

THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA DOCKET NO. 2017-305-E

IN RE:	Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920) AFFIDAV	AFFIDAVIT OF SARAH E. LEVERETTE, ATTORNEY AT LAW
)	

Sarah E. Leverette, being duly sworn, deposes and says:

The petition to PSC gives rise to numerous factual and determinant legal issues. However, the scope of this statement is limited to the issue of constitutionality of the legislative measure known as the <u>Base Load Review Act</u> (2007) as determined under Article IX, Section 1 of the South Carolina Constitution of 1895, as amended (1971) with emphasis on the language of the revision made by the West Committee.

Having served on the West Committee as an active and participating member for some three years, I feel that I can speak to the intent and purpose of the West Committee in amending Article IX, Section 1 by including the language "to the extent required by the public interest".

The West Committee was created for the purpose of updating and reorganizing the South Carolina Constitution of 1895 often referred to as the "peoples" document.

It is significant to the present issue that the committee in the process was also directed to address the problem of "over constitutional legislation" (emphasis added) by acting to restrict the legislative branch in areas of fundamental importance – an issue vital to the determination of the constitutional status of the Base Load Review Act.

Since we are dealing here with an issue involving protection of the public interest, I call attention to the obvious intent of the West Committee to involve the state citizenry in their deliberation process. Open for comment from all citizenry, the Committee heard from some 15 to 20

representatives of such groups. It is suggested that the impact of citizen input in Committee deliberations is important to the interpretation of the results.

However, of primary consideration in resolving this issue is the intent of the members of the West Committee themselves.

Article IX, Section 1

The General Assembly shall provide for all appropriate regulation of. . . publicly owned utilities and privately owned utilities serving the public as and to the extent required by the public interest.

It is appropriate to end this statement with a quote from the well analyzed and researched opinion of the South Carolina Attorney General:

A Blue Ribbon Panel, the West Committee, chosen to make a study of the South Carolina Constitution of 1895 formulated the language of this provision.

The revision was taken from the Kentucky Constitution but it is most important to the issue that the Committee itself insisted on adding the language "to the extent required by the public interest."

There is no question that the language was intended by the committee to be a limitation on the power of the General Assembly. (See West Committee minutes 11,287) It is not bad constitutional policy to say that the constitution is concerned that utilities are properly managed for the public interest. Our Supreme Court typically affords considerable weight to the West Committee in interpreting the Constitution.

Conclusion

A review of the historic background of the constitutional provision contained in Article X, Section 1 and as well as the South Carolina case law both previous and subsequent to the West Committee revision leaves little doubt that enactment of the Base Load Review Act exceeds the bounds of constitutionality adjured "suspect" in the well-grounded Attorney General opinion of September 26, 2017. However, a legal declaration can only be made by the court,

AFFIANT FURTHER SAYETH NOT.

Sarah E. Leverette

APPENDIX A

Sworn to and subscribed before me On this **b** day of November, 2017.

Notary Public for South Carolina

My Commission Expires July 5, 2026